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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER

Chairman

WILLIAM A. MUNDELL

Commissioner

MARC SPITZER

Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

Arizona Corporation Commission

DOCKETED

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AZ Corporation Commission
Director Of Utilities

UTILITIES DIVISION

Complainant,

v.

QWEST LD CORP.

Respondent.

DOCKET NO. T-04190A-04-0904

DECISION NO. 67745

ORDER

Open Meeting
April 5 and 6, 2005
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Respondent Qwest LD Corp. ("QLDC") is a public service corporation providing long distance telecommunications service throughout much of Arizona. QLDC is an affiliate of Qwest Corporation ("Qwest") which is an Incumbent Local Exchange Carrier ("ILEC") and Bell Operating Company ("BOC") as defined in the Telecommunications Act of 1996 ("1996 Act").

2. Qwest received Section 271 authorization from the Federal Communications Commission ("FCC") to offer in-region interstate long distance service effective December 15, 2003.

3. Under Section 272 of the 1996 Act, Qwest is required to provide its interstate long distance service through a separate affiliate for at least 3 years. Two affiliates of Qwest, QLDC and Qwest Communications Corporation ("QCC") offer interstate long distance service (and intrastate long distance service).

1 4. QLDC was certificated to provide long distance service on or about December 9,
2 2003, in Decision No. 66613. QCC was certificated to provide long distance service on or about
3 December 9, 2003, in Decision No. 66612. The services of both QLDC and QCC were determined to
4 be "competitive" by the Commission and subject to the Commission's competitive classification
5 rules.

6 5. Shortly after receiving Section 271 authorization from the FCC, QLDC and QCC
7 began offering its Qwest Choice Long Distance calling plan in Arizona. Customers who subscribed to
8 the Qwest Choice Long Distance residential calling plan prior to August 15, 2004, with service up to
9 October 1, 2004, were assessed a \$.05/minute rate for interstate, interLATA/intrastate, and
10 intraLATA/intrastate long distance calls, and were subject to the monthly cap of \$20.00 (if they had a
11 qualifying Qwest Corporation local service home package) or \$25.00 (if they did not have a
12 qualifying package). The calling plan was advertised to consumers as having "no monthly
13 surcharge."

14 6. As required by law, QLDC and QCC filed tariffs and price lists with the Commission
15 setting forth their rates for intrastate Qwest Choice Long Distance service, as well as other long
16 distance packages. Those tariffs and price lists became effective on December 15, 2003.

17 7. On or about August 31, 2004, QLDC sent a written notice to its existing Qwest Choice
18 Long Distance residential customers indicating that it was instituting a new monthly charge of \$2.00
19 applicable on a per line basis. The notice also indicated that a \$.99 "interstate" services fee would
20 apply on a per account basis. Both charges took effect on October 1, 2004, for existing customers
21 and on August 16, 2004, for new customers.

22 8. These charges apply to jurisdictionally intrastate long distance calls.

23 9. QLDC did not include the new monthly charges in the price lists that it filed with the
24 Commission on July 5, 2004, with an effective date of August 5, 2004. Qwest did, however, post
25 new interstate rate schedules (Qwest LD Corp. RSS No. 1) which contained both of the new monthly
26 charges.

27 10. Shortly after QLDC gave notice of its \$2.99 monthly charge for its Qwest Choice
28 Long Distance residential plan, the Commission began receiving complaints regarding the new

1 charges. The Commission has received numerous complaints from consumers regarding the new
2 monthly charges.

3 11. Consumers expressed considerable dismay and frustration to the Commission that
4 Qwest had widely advertised its Plan as having "No Monthly Fees", unlike the plans of other long
5 distance carriers. In reliance on this, they signed up for the Qwest residential Calling Plan, only to be
6 informed shortly thereafter that Monthly Fees would henceforth apply. These consumers felt that
7 Qwest had misled them into signing up for the Plan, since shortly thereafter the customers were told
8 that the Plan's primary perceived benefit ("No Monthly Fee") was being eliminated.

9 12. On December 17, 2004, the Utilities Division ("Staff") filed a Complaint and Petition
10 for Order to Show Cause against QLDC alleging that the Qwest Choice Long Distance residential
11 plan is in reality a plan which offers the customer the capability of making both interstate and
12 intrastate long distance calls. Staff alleged that the interstate and intrastate portions of the plan are
13 not severable or offered on a stand-alone basis. As such, Staff believed that Qwest is required to
14 include in its intrastate price lists and tariffs all conditions of the plan applicable to intrastate long
15 distance calls, which in this case includes the \$2.99 surcharge. Staff argued that unless QLDC is
16 required to include all charges in its intrastate tariff which are applicable to intrastate services, QLDC
17 could in the future impose unilateral rate increases on consumers for intrastate services without the
18 oversight of the Commission and without complying with applicable Arizona law. Staff asserted that
19 in effect, QLDC has cloaked its new charges in an "interstate" veil to evade the Commission's
20 oversight authority over intrastate charges.

21 13. Staff's Complaint further alleged that QLDC formerly advertised its Qwest Choice
22 Long Distance Plan as having "No Monthly Fees". The phrase "No Monthly Fees" or its equivalent
23 was prominently featured in advertisements by QLDC for its Qwest Choice Long Distance Plan.

24 14. Staff stated in its Complaint that after obtaining authority to sell long distance services
25 from the FCC under Section 271, Qwest and QLDC engaged in a concerted joint effort to sign up
26 existing Qwest customers to QLDC long-distance service. Part of this effort included advertisements
27 and promotional materials that promoted QLDC's Qwest Choice Long Distance Plan as having "No
28 Monthly Fees".

1 15. Staff's Complaint also alleged that this prolonged advertising of the Qwest Choice
2 Long Distance Plan as having "No Monthly Fees" created an expectation by QLDC customers that
3 the Qwest Choice Long Distance Plan would, in fact, have no monthly fees. QLDC knew that its
4 advertising would create this expectation.

5 16. Staff's Complaint alleged violations of A.R.S. Section 40-365 and A.A.C. R14-2-
6 1106(B) which require public service corporations to file with the Commission schedules showing all
7 tolls, rates, rentals, charges, and classifications to be collected or enforced. The Staff also alleged
8 violations of A.R.S. Section 361 which requires the rates and charges of public service corporations
9 to be just and reasonable. Related violations of A.A.C. R14-2-110(B) and/or A.A.C. R14-2-1109
10 were also alleged.

11 17. On January 20, 2005, QLDC filed an Answer and Motion to Dismiss the Utilities
12 Division Complaint and Petition for Order to Show Cause. In its Answer, QLDC denied many of the
13 allegations in the Staff Complaint. In its Motion to Dismiss, QLDC argued that the Fees do not
14 "apply" to "intrastate calls", but rather they apply to a customer's ability to use QLDC's network to
15 place interstate calls. QLDC also argued that the relief sought by Staff in its Complaint would
16 conflict with FCC rules and policies, and thus would be preempted. QLDC stated that the FCC has
17 prohibited the filing in tariffs, of rates, terms and conditions for these services. QLDC also stated
18 that the relief sought by Staff would violate the Commerce Clause of the Constitution and the Equal
19 Protection Clauses of the Arizona and United States Constitutions. QLDC also stated that it
20 structured its Qwest Choice in a manner in response to customer demand. If QLDC is forced to
21 subject the service to state public utility regulation, the company argues that it would probably just
22 dispense with offerings of this nature.

23 18. The Staff and QLDC subsequently engaged in settlement discussions in an effort to
24 resolve the allegations contained in the Staff Complaint. The parties entered into a Settlement
25 Agreement dated March 31, 2005, which is attached hereto as Exhibit 1.

26 19. Under the Settlement Agreement, Qwest agrees with Staff's interpretation of Arizona
27 rules on an interim basis and that it will file intrastate long distance service tariffs and price lists in
28 Arizona consistent with Staff's interpretation of the Arizona statutes and rules pending the conclusion

1 of the generic docket or further Order of the Commission. Staff agreed to commence a generic
2 proceeding examining the filing requirements and tariff obligations of all interexchange carriers.
3 Qwest agreed to further waive or credit any applicable PIC/LPIC change charges up to \$10.00 per
4 line for QLDC customers who subscribed to the Qwest Choice Long Distance Calling Plan, between
5 January 1 through July 14, 2004, and who want to choose an alternate provider. Qwest will also give
6 Qwest customers who subscribed to Qwest Choice between January 1, 2004, through July 14, 2004,
7 and who changed their PIC/LPIC from September 1, 2004, and through December 31, 2004, a \$6.00
8 one time credit. Qwest also agreed to file with the Commission an intrastate tariff and/or price list
9 containing a charge equal to or equivalent to (but not in addition to) the \$2.99 monthly surcharge
10 which is now only included in the QLDC interstate rates and service schedule. Qwest agrees to
11 include any and all monthly charges of this nature in the applicable intrastate tariff until such time as
12 the generic docket is concluded or further Order of the Commission.

13 20. In response to Staff Data Request No. 3-36, QLDC refused to state when it stopped
14 advertising its Qwest Choice Long Distance Plan as having "No Monthly Fees", other than to state
15 that it discontinued the advertisements "leading up to the implementation" of the new fees. Within 10
16 days of this Order, Qwest shall inform the Commission of when it stopped advertising the Choice
17 Plan as having "No Monthly Fees". Qwest shall also file with the Commission, under seal, memos
18 from Qwest officers discussing the fees and/or minutes of board meetings approving the new fees.

19 21. On April 1, 2005, Qwest filed tariffs and price lists with the Commission as required
20 by the Agreement. On April 5, 2005, Qwest filed revised tariffs and price lists with the Commission.
21 This Order should in no way be construed as a finding that the tariffs and price lists filed by the
22 company have been approved or accepted by the Commission as complying with the Agreement.
23 The tariffs and price lists shall be subject to the independent review process provided for under
24 current Commission rules.

25 22. Staff and Qwest believe that the agreement is in the public interest and respectfully
26 requested that the Commission approve it.

CONCLUSIONS OF LAW

1
2 1. Qwest, QLDC and QCC are Arizona public service corporations within the meaning of
3 Article XV, Section 2, of the Arizona Constitution.

4 2. The Commission has jurisdiction over Qwest, QLDC and QCC and over the subject
5 matter of Staff's Complaint.

6 3. The Commission, having reviewed the attached Settlement Agreement, believes that it
7 is in the public interest and should be approved.

8 4. The attached Settlement Agreement shall have no effect on the rights of the customers
9 of Qwest, QLDC, and QCC to pursue other remedies either through the complaint process before the
10 Commission, through the courts, or by any other means.

ORDER

11
12 IT IS THEREFORE ORDERED that the Settlement Agreement dated April 1, 2005 entered
13 into between the Utilities Division Staff and Qwest is hereby approved.

14 IT IS FURTHER ORDERED that the Utilities Division Staff shall forthwith commence a
15 generic investigation and rulemaking proceeding to address the filing requirements and tariff
16 obligations of interexchange carriers.

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1 IT IS FURTHER ORDERED that Qwest and its affiliates shall forthwith file with the
 2 Commission tariffs and/or price lists containing any and all monthly surcharges applicable to
 3 combined interstate and intrastate long distance calling plans. Staff shall review the price lists and
 4 tariffs filed by the Company on April 5, 2005 under the review process provided for under current
 5 Commission rules.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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 CHAIRMAN

11 
 COMMISSIONER

12 
 COMMISSIONER

13 
 COMMISSIONER

14 
 COMMISSIONER

15
 16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
 17 Executive Secretary of the Arizona Corporation
 18 Commission, have hereunto set my hand and caused the
 19 official seal of the Commission to be affixed at the
 20 Capitol, in the City of Phoenix, this 11th day of April,
 21 2005.

22 
 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

23 DISSENT _____

24 DISSENT _____

1 The original and thirteen (13) copies of the foregoing
2 were filed this _____ day of April, 2005, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copies of the foregoing were hand-delivered
8 on this _____ day of April, 2005, to:

9 Chairman Marc Spitzer
10 Commissioner William A. Mundell
11 Commissioner Jeff Hatch-Miller
12 Commissioner Mike Gleason
13 Commissioner Kristin K. Mayes

14 Lyn Farmer, Chief Administrative Law Judge
15 Hearing Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Ernest Johnson
20 Director, Utilities Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 Copies of the foregoing were mailed
25 this _____ day of April, 2005, to:

26 Norman Curtright
27 QWEST Corporation
28 4041 North Central Avenue, Suite 1100
Phoenix, Arizona 85012

Timothy Berg
FENNEMORE CRAIG
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

Samuel A. Thumma
PERKINS COIE BROWN & BAIN, PA
2901 North Central Avenue
P.O. Box 400
Phoenix, AZ 85001-0400

John M. Devaney
PERKINS COIE, LLP
607 14TH Street NW
Washington, DC 20015

SETTLEMENT AGREEMENT

The Arizona Corporation Commission Staff ("Staff") and Qwest LD Corp., its parent, affiliated companies or their successors ("Qwest" or "the Company"), (the Parties") hereby agree to a settlement (the "Settlement" or "this Agreement") of the Complaint and Petition for Order to Show Cause Docket ("Docket") filed by Staff and currently pending before the Arizona Corporation Commission ("Commission"), in Docket No. T-04190A-04-0904 (hereinafter referred to as "the Staff Complaint"). The Staff Complaint alleges that Qwest LD Corp. was required to file tariff and/or price list revisions with the Commission prior to implementing a \$2.99 surcharge as part of its Qwest Choice Long Distance calling plan, which applies to both interstate and intrastate long distance calls made by Arizona customers. The following terms and conditions are intended to resolve all of the issues associated with Qwest's implementation of the \$2.99 surcharge as part of its Qwest Choice Long Distance calling plans as set forth in the Staff Complaint.

RECITALS

WHEREAS, the Parties desire to adopt this Agreement subject to Commission approval;

WHEREAS, by adopting this Agreement, the Parties intend to settle and terminate the Staff Complaint in a manner that is fair and reasonable;

WHEREAS, the Staff Complaint alleged, inter alia, that Qwest was required to file tariff and/or price list revisions with the Commission prior to implementing a \$2.99 monthly surcharge as part of its Qwest Choice Long Distance calling plans, which is applicable to both interstate and intrastate calls;

WHEREAS, Qwest acknowledges and agrees to accept on an interim basis, without prejudice, and until further Order of the Commission or until the conclusion of the generic investigation referenced herein, the Staff's interpretation of the Arizona statutes and rules regarding tariffing of monthly recurring charges for long distance plans which are applicable to both interstate and intrastate calls;

WHEREAS, the parties agree that the terms and conditions of this Agreement, are fair, reasonable and in the public interest;

WHEREAS, the Parties recognize that Staff does not have the power to bind the Commission. For purposes of proposing a settlement agreement, Staff acts in the same manner as any party to a Commission proceeding;

WHEREAS, the Parties further recognize that the Commission will independently consider and evaluate the terms of this Agreement;

WHEREAS, if the Commission issues an order adopting all material terms of this Agreement, such action shall constitute Commission approval of the Agreement. Thereafter, the Parties shall abide by the terms as approved the Commission.

WHEREAS, if the Commission fails to issue an order adopting all material terms of this Agreement, any or all of the Parties may withdraw from this Agreement, and such Party or Parties may pursue without prejudice their respective remedies at law. For purposes of this Agreement, whether a term is material shall be left to the discretion of the Party choosing to withdraw from the Agreement.

WHEREAS, nothing in this agreement shall be construed as an admission by any of the Parties that any of the positions taken by any Party in this proceeding is unreasonable or unlawful. In addition, acceptance of this Agreement by any of the Parties is without prejudice to any position taken by any party in these proceedings.

WHEREAS, this Agreement represents the Parties' mutual desire to compromise and settle disputed issues in a manner consistent with the public interest. None of the positions taken in this Agreement by any of the Parties may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except in furtherance of this Agreement.

WHEREAS, the Parties shall support and defend this Agreement before the Commission, and if the Commission adopts an order approving all material terms of this Agreement, the Parties will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.

WHEREAS, in consideration thereof, the Parties agree as follows:

TERMS AND CONDITIONS

- 1. Qwest LD Corp and Its Affiliates Agree to Staff's Interpretation of Statutes and Rules as set forth in the Staff Complaint until a Generic Proceeding is Concluded by the Commission or until Further Order of the Commission.**

Staff believes that the rules and statutes referenced in its Petition are applicable. Qwest agrees with Staff's interpretation of the rules on an interim basis and it will file intrastate long distance service tariffs and/or price lists in Arizona consistent with Staff's interpretation of the rules on an interim basis and without prejudice pending the conclusion of the generic docket or further order of the Commission. Staff and Qwest agree that a generic docket be initiated (to be concluded within 18 months of the Commission order approving this settlement) to address the filing requirements and tariff obligations of interexchange carriers. Staff agrees that any new or additional filing requirements defined in the generic docket will have application to Qwest on only a going forward basis from the date of the final order in the generic docket.

2. PIC/LPIC Fee Waiver for Certain Customers.

For current Qwest LD Corp. (QLDC) customers who, between January 1, 2004 through July 14, 2004, subscribed to Qwest Choice long distance calling plan (no monthly recurring fees, 5 cents a minute for interstate usage and 5 cents per minute for intrastate usage, \$20 monthly cap) and who, after receiving notice described below, wish to choose an alternative long distance carrier, Qwest will waive or credit any applicable PIC/LPIC change charges, up to \$10. No later than sixty (60) days from the issuance of the Commission order approving this settlement, Qwest shall contact by mail all QLDC customers who subscribed during this period of time to the Qwest Choice long distance calling plan (no monthly recurring fees, 5 cents a minute for interstate usage and 5 cents per minute for intrastate usage, \$20 monthly cap) in writing informing them that they have sixty (60) days from the mailing date to take advantage of this offer and change their long distance carrier.

3. Qwest to Provide Notice and Special Toll Free Number.

Qwest shall inform the long distance calling plan customers defined in Paragraph 2 above, that they need to contact Qwest either by mail or by calling a toll free number by a specific date in order to take advantage of this offer. Qwest shall provide a toll free number for these customers to call when taking advantage of this offer.

4. Billing Credit For Certain Customers Who Previously Changed Carriers as a Result of the \$2.99 Surcharge.

For current Qwest Corporation customers who also subscribed to a Qwest Choice long distance calling plan (no monthly recurring fees, 5 cents a minute for interstate usage and 5 cents per minute for intrastate usage, \$20 monthly cap), between January 1, 2004 and through July 14, 2004 and who changed their PIC/LPIC from September 1, 2004 and through December 31, 2004 shall receive a \$6.00 one time billing credit. The credit shall be issued no later than ninety (90) days from the date of the Commission order approving this settlement.

5. Long Distance Tariff and Price List Filing Commitment.

Qwest will file with the Commission in its Arizona intrastate tariffs and/or price lists a charge equal to or equivalent to, but not in addition to the \$2.99 monthly recurring charge and any other applicable monthly recurring charges that are now only included in the Qwest interstate Rates and Services Schedule. Qwest agrees to include in its intrastate long distance tariffs and/or price lists a charge equal to or equivalent to, but not in addition to any and all recurring monthly charges of this nature in the applicable intrastate tariff until such time as the generic docket is concluded or until the Commission issues a superseding order. Qwest agrees to comply with existing Commission rules for all subsequent rate changes or for the creation of new long distance calling plan charges until further order of the

Commission, or pending the resolution of the generic docket. Existing Qwest Choice long distance calling plans will be grandfathered.

6. Qwest and QLDC will provide Marketing Scripts Requested by Staff.

QLDC will provide Staff with the marketing scripts requested by Staff in its Petition and will provide Staff with new Choice long distance marketing scripts when they are modified.

7. Qwest Will File Report.

Within one hundred eighty (180) days of the Commission order approving this settlement, Qwest shall report to the Commission the total number of customers who received the PIC/LPIC charge waiver or credit and the total dollar amount credited pursuant to paragraphs 2 and 4 above. A preliminary estimate of the amount to be waived under paragraph 2 and the amount to be credited under paragraph 4 is attached hereto as Exhibit A. The report shall be attested to by an officer of the Company.

8. Settlement of Claims Relating to QLDC's Implementation of its \$2.99 (\$2.00 and .99) Monthly Surcharge.

This Agreement is intended to resolve all the issues dealing with Qwest's implementation of the \$2.99 monthly charge in its Qwest Choice Long Distance calling plans.

DATED THIS 1st day of April, 2005.

ARIZONA CORPORATION COMMISSION
STAFF

BY: 

Ernest G. Johnson
Director, Utilities Division

QWEST and QWEST LD CORP.

BY: 

Patrick J. Quinn
President - Qwest Arizona

EXHIBIT A

Estimated OSC Stipulation Costs

T-04190A-04-0904

Paragraph #2	Mailing	\$100,000
	PIC/LPIC Waiver	\$60,000 - \$100,000
Paragraph #4	One Time Credit	\$150,000
TOTAL		\$310,000 - \$350,000

Note: Previous PIC/LPIC waiver was \$50,000

The above costs are only estimates. The actual costs will be reported pursuant to paragraph 7 of the settlement agreement.

